

Board of Zoning Adjustment

Staff Report

November 19, 2018



Case No:	18APPEAL1004
Project Name:	Southern Parkway Appeal
Location:	3818 Southern Parkway
Owner:	3818 S Parkway Land Trust
Appellant:	Michael T. Fallot
Existing Zoning District:	R-5
Existing Form District:	Traditional Neighborhood
Jurisdiction:	Louisville Metro
Council District:	15 – Marianne Butler
Case Manager:	Chris French, AICP

REQUEST(S)

Appeal of a staff determination issued by the Office of Planning & Design Services concerning a request for nonconforming rights for a two-family dwelling (duplex) at 3599 Henry Avenue, Louisville, KY.

CASE SUMMARY/BACKGROUND

On April 26, 2018, Michael T. Fallot, Trustee for the 3818 S Parkway Land Trust, requested a determination that the existing building at 3818 Southern Parkway is a legally nonconforming duplex. After a review of the application and information within Develop Louisville files, Planning & Design Services staff determined that there was insufficient evidence to support a determination that the duplex is legally nonconforming. This decision was provided to the property owner in a letter dated September 24, 2018.

The appellant filed an appeal of the staff determination in a timely manner on September 27, 2018.

As set forth in Louisville Metro Land Development Code (LDC) Sec. 11.7.3, pursuant to Kentucky Revised Statutes (KRS) 100.257 and 100.261, the Board shall hear appeals of staff determinations in the following areas: 1) written interpretations of the provisions of the LDC and 2) an official action, order, requirement, interpretation, grant, refusal, or decision of an administrative official, zoning enforcement officer or code enforcement officer.

The appellant is asserting that both units were lawfully established as independent dwelling units and thereby the building is a duplex and not a single-family residence.

The subject property is currently zoned R-5 Single Family. Pursuant to LDC Sec. 2.2.7, this zoning classification does not permit a duplex. In order for the duplex to be lawfully nonconforming to this provision, it must have been lawfully in existence at the time in which the zoning regulation which does not permit the duplex was enacted. Further, the nonconforming use must not have been abandoned as the abandonment of a nonconforming use terminates the nonconforming use status.

In both the nonconforming rights and appeal applications, the appellant submitted documentation to support the existence of a duplex. This documentation is part of the record and is available for the Board to review on the Louisville Metro Government Agenda & Meeting Portal (<http://louisville.legistar.com>).

PREVIOUS CASES ON SITE

18NONCONFORM1019: This case is subject to this appeal application.

INTERESTED PARTY COMMENTS

No interested party comments have been received as of the publication date of this report.

STAFF ANALYSIS

The following sections of the LDC are applicable to this case:

Section 1.2.2	Definitions
Section 1.3.1	Use
Section 2.2.7	R-5 Residential Single-Family District

As currently defined in LDC Sec. 1.2.2, the following definitions are relevant to the appeal:

Dwelling, Single Family (or One Family) - A dwelling designed for and occupied exclusively by one family. This term includes Conventional, Average-Lot, Clustered and Zero-Lot-Line one family dwellings.

Dwelling, Two Family (or Duplex) - Any group of two dwelling units occupying a single lot or building site, whether composed of one or more than one principal building. This term includes Conventional, Average-Lot, Clustered and Zero-Lot-Line two family dwellings.

Dwelling Unit - Either a single room or two or more connected rooms used exclusively as a single unit and intended for occupancy for no less than thirty (30) consecutive days or more by one family, and providing complete, independent living facilities (which at a minimum includes permanent provisions for living, sleeping, eating, cooking and sanitation which are accessed independently). Notwithstanding the provisions of this definition, where permitted, short term rentals may be occupied by more than one family and for less than 30 consecutive days. This term does not include hotel or motel rooms, extended stay lodging facilities, nursing home rooms, or assisted living residence units.

Family - One or more persons occupying premises and living as one housekeeping unit, and distinguished from a group occupying a boarding and lodging house, fraternity or sorority house, a club, hotel, or motel.

Nonconformity (or Nonconforming) - An activity or a building, structure or a portion thereof which lawfully existed before the adoption or amendment of the zoning regulation, but which does not conform to all of the regulations contained in the zoning regulation which pertain to the zone in which it is located.

Based on a review of archived zoning maps, the zoning of the property has been single-family residential since adoption of zoning in 1931 by the City of Louisville. Pursuant to LDC Sec. 2.2.7, the R-5 single-family zoning classification does not permit a duplex.

According to Jefferson County PVA record, the building currently has a "Type 2: Duplex" property type and is described as a "Duplex". Property details indicate that the two story building was built in 1900, and consists of 2,744 square feet of finished area and has three full bathrooms. The number of kitchens and bedrooms was not provided.

Staff reviewed city directories from 1971, 1977, 1981, 1988, 1993, 1998, 2003, 2004, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, and 2017; the directories identified two occupants up until 2003, but after that the property was not listed.

In the basis of appeal, the Appellant asserts that the structure was configured as a duplex when the property was purchased in 2016. The property was vacant at the time because of its condition. The applicant provides that the PVA classifies the structure as a duplex and the property received renovation permits and certificate of occupancy from Codes and Regulations in 2018. Staff agrees with the Appellant that the structure is currently configured as a duplex.

In addition, the Appellant asserts that there are other multi-family uses in the area, including other properties zoned R-5. Staff agrees with this assertion, but it is irrelevant to the case since nonconforming rights is not based on surrounding property, but on the specific history of the subject property.

This subject property is within the boundaries of the City of Louisville that existed prior to consolidation to Louisville Metro in March of 2003. Within these boundaries, a nonconforming rights claim must be dated back to June 18, 1971 or the date in which the zoning regulations which would not permit such activity was enacted (whichever date is later). In this case, the R-5 zoning was in place on June 18, 1971 and duplexes have not been permitted within that zoning category since that date. Therefore, in order to recognize the duplex as lawfully nonconforming, evidence must support the nonconforming use as in existence on June 18, 1971. Further, evidence must support that the use was never abandoned and has continued to exist from June 18, 1971 to present.

STAFF CONCLUSIONS

It does not appear that the structure was originally built as a duplex, but it is clear that the structure is currently configured as a duplex. A nonconforming rights claim does not need to date back to the year in which the building was constructed (1900 per the PVA), but 1971. If the Board finds the referenced supporting evidence as accurate and reliable, in addition to any additional evidence provided at the hearing, nonconforming rights concerning the duplex may be recognized. Based on the information that staff could find in the City Directories the structure was a duplex in 1971.

However, the Board must also find that the nonconforming rights were not abandoned and that the building has been continuously used as a duplex. As stated earlier, staff could find no evidence that the property was used as a duplex from 2003 onward, an administrative decision on such a request must have sufficient evidence. The Board has greater latitude than staff to take additional evidence into consideration, including testimony at the hearing in order to make its determination on an appeal.

Pursuant to LDC 11.7.3 and KRS 100.257, the Board of adjustment shall have the power to hear and decide cases where it is alleged by an applicant that there is error in any order, requirement, decision, grant, or refusal made by an administrative official in the enforcement of the zoning regulation.

STANDARD OF REVIEW

Based upon the file of this case, this staff report, and the evidence and testimony submitted at the public hearing, the Board must determine:

1. If the duplex was lawfully in existence on June 18, 1971.
2. And if so, has it been continuously used as duplex from June 18, 1971 to present.

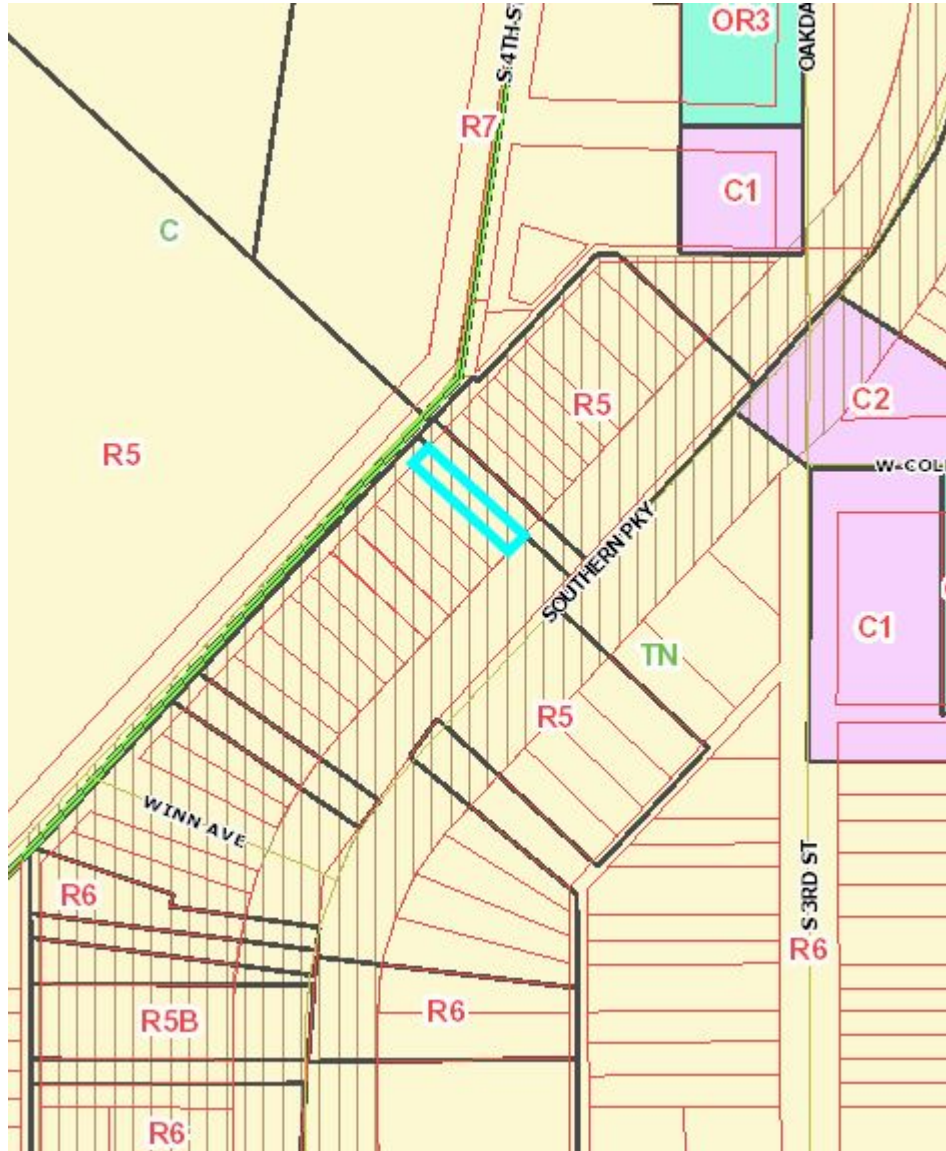
NOTIFICATION

Date	Purpose of Notice	Recipients
11/2/2018	Hearing before BOZA	Appellant, Adjacent Neighbors, Administrative Official
11/2/2018		Sign Posted
11/9/2018		Legal Ad in Courier-Journal – Circulation Area

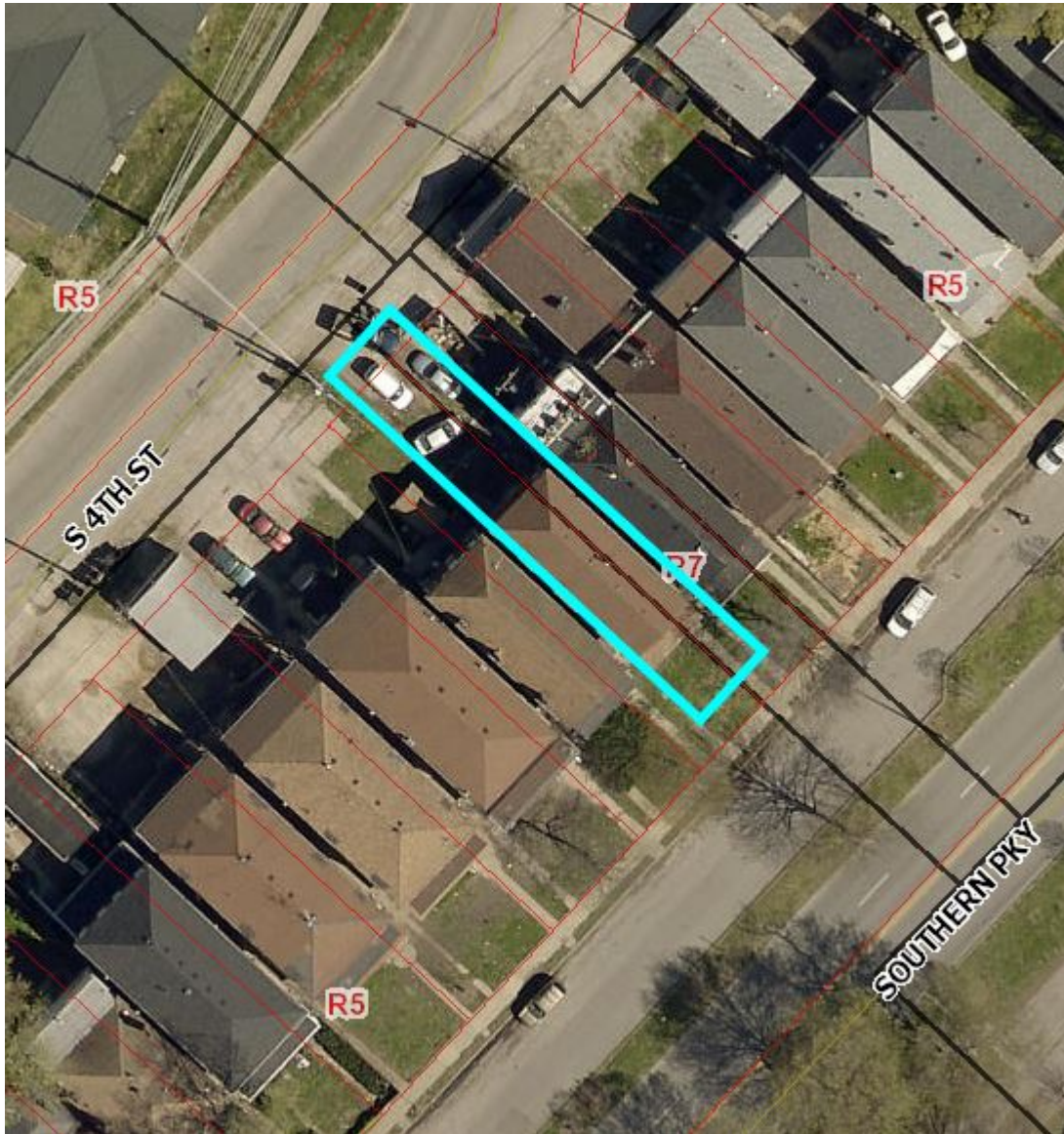
ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Site Inspection Photographs

1. Zoning Map



2. Aerial Photograph



3. Site Inspection Photographs –

1. Front of property



2. Gas meters



3. Rear stairs and entrances

